

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TIMMY LYNN DUKE, §
#606639 §
§
VS. § CIVIL CASE NO. 4:24-CV-661-SDJ
§
DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

The above-entitled and numbered habeas action was referred to former United States Magistrate Judge Kimberly Priest Johnson, who issued a Report and Recommendation (“the Report”) (Dkt. #8) concluding that this petition for writ of habeas corpus should be dismissed without prejudice to Petitioner’s right to file a motion for leave to file a successive § 2254 petition in the United States Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. §§ 2244(b)(3)(A), 2254. Petitioner filed objections to the Report on August 21, 2024, (Dkt. #12) followed by two motions for permission to file a “subsequent application.” (Dkt. #s 14 & 15). The latter are courtesy copies of motions Petitioner allegedly filed with the Fifth Circuit.

Petitioner filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on July 11, 2024 (Dkt. #2). In the objections to the Report, Petitioner states he requested permission from the Fifth Circuit to file a successive petition on the same day he filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner appears to have filed a courtesy copy of that request with this Court on July 10, 2024 (Dkt. #1).

On October 4, 2024, Petitioner filed what appears to be a copy of his request to file a successive petition with the Fifth Circuit that contains a declaration date of September 27, 2024 (Dkt. #14-2). On November 8, 2024, Petitioner filed what appears to be a copy of a subsequent, undated request to file a successive petition with the Fifth Circuit (Dkt. #15). Regardless, the language of 28 U.S.C. § 2244(3)(A) explicitly states that permission must be sought and obtained before filing a second or successive application. Moreover, an independent review of the docket for the Fifth Circuit reveals that Petitioner has made no such request. The only docket activity found for Petitioner relates to a habeas petition filed in the Western District of Texas, wherein the Fifth Circuit denied permission to file a successive habeas petition on November 8, 2022. *In re Timmy Lynn Duke*, No. 22-50831; *see also Duke v. TDCJ-CID*, 6:22-CV-950. The Court has reviewed the tendered objections, and they lack merit.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is accordingly **ORDERED** that the petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 is **DISMISSED** without prejudice for lack of jurisdiction as successive.

It is further **ORDERED** that all motions not previously ruled on are hereby **DENIED**.

So **ORDERED** and **SIGNED** this 25th day of March, 2025.



SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE